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RECENT LEGAL LITERATURE

LEGAL ESSAYS. By James Bradley Thayer, LL.D., late Weld Professor of Law at Harvard University; edited by Ezra Ripley Thayer. Boston: Boston Book Company, 1907, pp. xvi, 402.

This is a collection of fourteen papers by the late Professor Thayer of the Harvard Law School, some of which were prepared for oral delivery, while others have been published in legal or other periodicals. The work of the editor and his associate has been confined to arrangement of the papers, the adding of occasional notes, of value principally because they refer the reader to other discussions by Professor Thayer of the subject matter of the papers to which these notes are appended, and the making of an index. Most of the papers are concerned with subjects of constitutional law or of the law of evidence. Three or four of the essays relate to subjects largely political in nature and concerning topics about which public interest has waned somewhat since they were written. But though popular discussion concerning the subject matter of one or two of these essays has largely ceased, and notwithstanding the previous publication in one place or another of all of these papers, this collection will be gladly welcomed, not only by the numerous disciples of Professor Thayer, but by lawyers and law teachers with scholarly interest generally.

One of the most interesting of the papers, the subject of which was never of greater importance than at the present moment, is the first, entitled "The Origin and Scope of the American Doctrine of Constitutional Law." In the first part of this paper the author traces the growth of that remarkable doctrine, so peculiar to American law and so contrary to the actual practice of the English law, from which we have in the main derived our own jurisprudence, namely, the right and power of the Supreme Court to pass upon the constitutionality of the legislative enactments.¹

In the succeeding parts of this paper Professor Thayer points out with what care this remarkable power should be exercised, and he makes very clear the fact, that the rule that a legislative enactment should be declared unconstitutional and void only when the violation of the organic law is so plain and clear as to leave no room for doubt, is a rule of law and not "a mere form of language, a mere expression of courtesy and deference." In the last subdivision of this paper Professor Thayer points out how the situation varies somewhat with reference to the supreme courts of the respective states.

At least a third of the book is given up to discussion of some phases of the law of evidence, a field which Professor Thayer has done so much to illuminate, and a subject which more than almost any one else he has rescued from haphazard treatment and put upon a scientific basis. The principal

¹ For an argument opposed to the generally accepted opinion as to the existence of this power, see 4 MICH. LAW REV. 616.

paper on this subject is a treatment of the one time celebrated case known as "Bedingfield's Case,"² in which the doctrine of *Res Gesta* (as Professor Thayer insists it should be called) is discussed with clear insight and accuracy.

A paper upon a subject both legal and political in nature is entitled "Our New Possessions." This was written in 1899, before the national opinion and purpose concerning the lately acquired insular possessions had even begun to crystallize. With remarkable accuracy the author anticipated the views later announced by the Supreme Court, as to the power of the United States to acquire the islands, and the legal and constitutional power to govern them as colonies, and that those islands would not necessarily become part of the "territory of the United States." It is refreshing to note the personal detachment and lack of prejudice, and at the same time the firm national feeling with which this quiet scholar approaches and discusses his problem, an attitude quite different from that with which some other persons discussed the subject then and later. While admitting that the acquisition of the islands may in some respects be unfortunate, Professor Thayer maintains that events had so shaped themselves that at least in 1898 it had become inevitable that we should assume control. With reasoning at once close and accurate and yet wholly devoid of fine spun subtleties, he defends our legal right to take and hold these possessions, and then entirely without "buncombe" he expresses the hope and his confidence that we shall meet the heavy responsibilities which we were thus compelled to assume.

Space is lacking to discuss all of these papers, even thus summarily. Others of especial interest are those on "Federal and State Decisions," "Bracton's Note Book," "The Teaching of English Law at Universities," and a brief but extremely suggestive review of Dicey's Law of the English Constitution. They are all characterized by the clear thinking, painstaking care and supreme scholarship which made Professor Thayer one of the ablest legal thinkers and scholars of his day.

H. M. B.

TRIAL EVIDENCE. A SYNOPSIS OF THE LAW OF EVIDENCE GENERALLY APPLICABLE TO TRIALS. By Richard Lea Kennedy, LL.B., of the St. Paul Bar. St. Paul: The Keefe-Davidson Co., 1906, pp. vii, 49.

This is one of the books which, having a limited field of usefulness which all will recognize, yet compels the question of whether there is a real need for a book of its type. There are a number of books already in this field of a similar character and serving the same general end. It will find strong competition in such books as Reynolds's Theory of the Law of Evidence and Stephens's Digest of the Law of Evidence in the presentation of the fundamentals of this branch of the law. An examination indicates that there is in the main accurate statement of the rules of evidence, with very good analysis and arrangement of topics. The author makes no claim that his presentation is exhaustive, indeed, he suggests that his book cannot furnish that fullness of knowledge the student requires.

² *Regina v. Bedingfield*, 14 Cox. C. C. 341.